



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 6

1445 ROSS AVENUE, SUITE 1200

DALLAS, TX 75202-2733

May 24, 2012

BY OVERNIGHT MAIL

Dennis J. Hetu, President
Continental Carbon Company
16850 Park Row
Houston, Texas 77084

Re: Notice of Violation, Continental Carbon Company, Ponca City, Oklahoma

Dear Mr. Hetu:

Enclosed you will find a Notice of Violation (NOV) pursuant to Section 113(a) of the Clean Air Act (CAA), 42 U.S.C. § 7413(a). This NOV is issued to Continental Carbon Company (CCC) for violations of the Prevention of Significant Deterioration and Title V requirements under the CAA and the Oklahoma State Implementation Plan at its Ponca City, Oklahoma, facility.

The factual allegations in the NOV are the Environmental Protection Agency's (EPA) summaries based upon information provided to the EPA in response to a request for information pursuant to the authority of Section 114 of the CAA. The information provided by CCC was accompanied by a broad claim of confidentiality.

On May 14, 2012, EPA communicated to CCC the opportunity to substantiate confidential business information (CBI) claims CCC asserted in responses submitted to EPA pursuant to Section 114 requests. CCC notified EPA on May 16, 2012, that it would substantiate its assertion of CBI. On May 23, 2012, CCC notified EPA, via electronic mail, that CCC does not claim as CBI any of the information contained in paragraphs 46 through 89 of the enclosed NOV.

Please note the opportunity to confer as outlined in the NOV. Any request to confer should be directed to Jan Gerro, Senior Enforcement Counsel. Ms. Gerro can be reached at (214) 665-2121.

Sincerely,

A handwritten signature in black ink, appearing to read "John Blevins", is written over the typed name.

John Blevins
Director
Compliance Assurance and
Enforcement Division

Enclosure

Re: Continental Carbon Company
Ponca City, OK Facility

cc: Thomas G. Echikson
LeClairRyan
1101 Connecticut Ave., NW
Suite 600
Washington, DC 20036

David T. Buente, Jr.
Sidley Austin LLP
1501 K Street, NW
Washington, DC 20005
via Overnight Mail

Eddie Terrell, Director, Air Quality Division
Oklahoma Department of Environmental Quality

IN THE MATTER OF:

CONTINENTAL CARBON COMPANY

16850 PARK ROW
HOUSTON, TEXAS 77084

NOTICE OF VIOLATION

This Notice and Finding of Violation (Notice) is issued to Continental Carbon Company (CCC) for violations of the Clean Air Act (CAA or the Act), 42 U.S.C. §§ 7401 *et seq.*, at its carbon black manufacturing plant located in Ponca City, Kay County, Oklahoma. Specifically, CCC has violated the Prevention of Significant Deterioration (PSD) and the New Source Review (NSR) permitting requirements of the Oklahoma State Implementation Plan (SIP) at its Ponca City, Oklahoma facility.

This Notice is issued pursuant to Section 113(a)(1) of the CAA, 42 U.S.C. § 7413(a)(1). Section 113(a) of the CAA requires the Administrator of the United States Environmental Protection Agency (EPA) to notify any person in violation of a SIP or permit of the violations. Also included are findings of violations of the federal regulations. The authority to issue this Notice has been delegated to the Regional Administrator of EPA Region 6, and re-delegated to the Director, Compliance Assurance and Enforcement Division, EPA Region 6.

1. The Clean Air Act is designed to protect and enhance the quality of the nation's air so as to promote the public health and welfare and the productive capacity of its population. Section 101(b)(1) of the Act, 42 U.S.C. § 7401(b)(1).

2. Section 108(a) of the Act, 42 U.S.C. § 7408(a), requires the Administrator of EPA to identify and prepare air quality criteria for each air pollutant, emissions of which may endanger public health or welfare, and the presence of which results from numerous or diverse mobile or stationary sources. For each such "criteria" pollutant, Section 109 of the Act, 42 U.S.C. § 7409, requires EPA to promulgate national ambient air quality standards (NAAQS) requisite to protect the public health and welfare.

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3. Pursuant to Sections 108 and 109, 42 U.S.C. §§ 7408 and 7409, EPA has identified carbon monoxide (CO), nitrogen oxides (NO_x), sulfur dioxide (SO₂), and particulate matter less than 10 micrometers (PM₁₀) as criteria pollutants, and has promulgated NAAQS for such pollutants. The primary and secondary NAAQSs for SO₂ are defined in 40 C.F.R. § 50.4 and 40 C.F.R. § 50.5.
4. Under Section 107(d) of the Act, 42 U.S.C. § 7407(d), each state is required to designate those areas within its boundaries where the air quality is better or worse than the NAAQS for each criteria pollutant, or where the air quality cannot be classified due to insufficient data. An area that meets the NAAQS for a particular pollutant is termed an "attainment" area with respect to such pollutant. An area that does not meet the NAAQS for a particular pollutant is termed a "nonattainment" area with respect to such pollutant. An area that cannot be classified as either "attainment" or "nonattainment" with respect to a particular pollutant due to insufficient data is termed "unclassifiable" with respect to such pollutant.
5. At all times relevant to this NOV, Kay County, the area in which the Facility is located, has been classified as either attainment or unclassifiable for all criteria pollutants.

Prevention of Significant Deterioration

6. Part C of Title I of the CAA (Sections 160 through 169) establishes the federal Prevention of Significant Deterioration (PSD) permitting program and requires each state to include a PSD program as part of its SIP.
7. Section 165(a) of the CAA, 42 U.S.C. § 7475(a), among other things, prohibits the construction and operation of a "major emitting facility" in an area designated as attainment or unclassifiable for the applicable National Ambient Air Quality Standards (NAAQS), without first obtaining a PSD permit and installing Best Available Control Technology (BACT).
8. Section 169(1) of the Act, 42 U.S.C. § 7479(1), designates carbon black plants which emit or have the potential to emit one hundred tons per year or more of any pollutant to be "major emitting facilities."
9. Section 169(2)(C) of the Act, 42 U.S.C. § 7479(2)(C), defines "construction" to include "modification" (as defined in Section 111(a) of the Act). "Modification" is defined in Section 111(a) of the Act, 42 U.S.C. § 7411(a), to be "any physical change in, or change in the method of operation of, a stationary source which increases the amount of any air

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pollutant emitted by such source or which results in the emission of any air pollutant not previously emitted.”

10. Sections 110(a) and 161 of the Act, 42 U.S.C. §§ 7410(a) and 7471, require each state to adopt a SIP that contains emission limitations and such other measures as may be necessary to prevent significant deterioration of air quality in areas designated as attainment or unclassifiable.
11. A state may comply with Sections 110(a) and 161 of the Act, 42 U.S.C. §§ 7410(a) and 7471, by having its own PSD regulations, which must be at least as stringent as those set forth at 40 C.F.R. § 51.166, approved by EPA as part of its SIP. If a state does not have a PSD program that has been approved by EPA and incorporated into its SIP, the federal PSD regulations set forth at 40 C.F.R. § 52.21 may be incorporated by reference into the SIP. 40 C.F.R. § 52.21(a).
12. On June 19, 1978, EPA established regulations implementing the federal PSD program at 40 C.F.R. § 52.21 and requirements for SIP approved programs at 40 C.F.R. § 52.166. *See* 43 Fed. Reg. 26,403 (June 19, 1978). Since that time, the PSD regulations have been revised, with subsequent revisions incorporated under 40 C.F.R. § 52.21.
13. The applicable air quality regulations, promulgated by the State of Oklahoma pursuant to the requirements of 40 C.F.R. § 51.166, have been incorporated into the state's implementation plan (Oklahoma SIP) and subsequently approved by EPA. *See* 45 Fed. Reg. 09741 (February 13, 1980); 40 C.F.R. § 52.1960.
14. On August 25, 1983, EPA approved Oklahoma's PSD program. *See* 48 Fed. Reg. 38,635, 38,636 (August 25, 1983) and 40 C.F.R. § 52.1960(c). Pursuant to its PSD program, the State of Oklahoma issues permits governing the operation and construction of regulated facilities. 48 Fed. Reg. at 38,636.
15. Oklahoma's PSD program is promulgated under Oklahoma Air Pollution Control Regulation (OAPCR) 1.4.1 – 1.4.4. *See* 40 C.F.R. § 52.1920(c) (2009); 48 Fed. Reg. at 38,636.
16. The Oklahoma SIP at OAPCR 1.4.1(c)(1) requires that a facility obtain a permit when the addition of a new source, or the modification of an existing source, results in a net increase in air contaminant emissions.
17. OAPCR 1.4.4(e) and (f) require that a source subject to PSD regulations undergo a control technology review, demonstrate that the control technology to be applied is the best that is available for each regulated pollutant for which it would be a significant net emissions increase at the source, and evaluate the impact of the emissions increase on ambient air quality.

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18. OAPCR 1.4.4(e) requires that the owner or operator of a new major stationary source or major modification to apply BACT for each pollutant that experienced a significant net emissions increase as a result of a physical or operational change to that source.
19. OAPCR 1.4.4(b)(22)(A) defines as "significant" rates of emissions that equal to or exceed the following rates:

Nitrogen oxides (NO _x):	40 tons per year (tpy)
Sulfur dioxide (SO ₂):	40 tpy
Carbon monoxide (CO):	100 tpy
Volatile organic compounds (VOC):	40 tpy
Hydrogen sulfide (H ₂ S):	10 tpy
Total reduced sulfur (TRS) (including H ₂ S):	10 tpy
Particulate Matter – 10	15 tpy
Particulate Matter – 2.5	10 tpy

20. Violations of the federally approved Oklahoma PSD program are federally enforceable pursuant to Section 113 of the Act.

Federal Title V Requirements

21. Section 502(a) of the CAA, 42 U.S.C. § 7661a(a), provides that no source may operate without a Title V permit after the effective date of any permit program approved or promulgated under Title V of the Act. EPA first promulgated regulations governing state operating permit programs on July 21, 1992. See 57 Fed. Reg. 32295; 40 C.F.R. Part 70. EPA promulgated regulations governing the Federal operating permit program on July 1, 1996. See 61 Fed. Reg. 34228; 40 C.F.R. Part 71.
22. Section 503 of the CAA, 42 U.S.C. § 7661b, sets forth the requirement to submit a timely, accurate, and complete application for a permit, including information required to be submitted with the application.
23. Section 504(a) of the CAA, 42 U.S.C. § 7661c(a), requires that each Title V permit include enforceable emission limitations and standards, a schedule of compliance, and other conditions necessary to assure compliance with applicable requirements, including those contained in a state implementation plan. 42 U.S.C. § 7661c(a).
24. 40 C.F.R. § 70.1(b) provides that: "All sources subject to these regulations shall have a permit to operate that assures compliance by the source with all applicable requirements." *See also*, OAC 252:100-8-3.

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25. 40 C.F.R. § 70.2 defines “applicable requirement” to include “(1) Any standard or other requirement provided for in the applicable implementation plan approved or promulgated by EPA through rulemaking under title I of the Act that implements the relevant requirements of the Act, including revisions to that plan promulgated in part 52 of this chapter . . .” *See also*, OAC 252: 100-8-2.
26. 40 C.F.R. § 70.7(b) provides that no source subject to 40 C.F.R. Part 70 requirements may operate without a permit as specified in the Act. *See also* OAC 252: 100-8-7(b).
27. 40 C.F.R. § 70.5(a) and (c) require timely and complete permit applications for Title V permits with required information that must be submitted and 40 C.F.R. § 70.6 specifies required permit content. *See also*, OAC 252: 100-8-5(b)(1-9).
28. 40 C.F.R. § 70.5(b) provides that: “Any applicant who fails to submit any relevant facts or who has submitted incorrect information in a permit application shall, upon becoming aware of such failure or incorrect submittal, promptly submit such supplementary facts or corrected information. In addition, an applicant shall provide additional information as necessary to address any requirements that become applicable to the source after the date it filed a complete application but prior to release of a draft permit.” *See also*, OAC 252:100-8-5(c).

Oklahoma’s Title V Requirements

29. EPA granted full approval of the Oklahoma Title V program on November 30, 2001. 40 C.F.R. Part 70, Appendix A. Oklahoma’s Title V program became effective on that date. *See* 61 Fed. Reg. 39597.
30. The Oklahoma regulations governing the Title V permitting program are codified at OAC 252:100-8-1, and are federally enforceable pursuant to Section 113(a)(3).
31. OAC 252: 100-8-3 supports 40 C.F.R. § 70.1(b) requirement that “All sources subject to these regulations shall have a permit to operate that assures compliance by the source with all applicable requirements.”
32. OAC 252: 100-8-7(b) supports 40 C.F.R. § 70.7(b) requirement that no source subject to 40 C.F.R. Part 70 requirements may operate without a permit as specified in the Act.
33. OAC 252: 100-8-5(1-8) supports 40 C.F.R. § 70.5(a) and (c) requirement to submit timely and complete permit applications for Title V permits with required information that must be submitted and 40 C.F.R. § 70.6 specifies required permit content.

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34. OAC 252: 100-8-5(c) supports 40 C.F.R. § 70.5(b) requirement that “Any applicant who fails to submit any relevant facts or who has submitted incorrect information in a permit application shall, upon becoming aware of such failure or incorrect submittal, promptly submit such supplementary facts or corrected information.

B. FACTUAL BACKGROUND

35. CCC owns and operates a carbon black manufacturing facility at Ponca City, Kay County, Oklahoma (Facility).
36. CCC is a Delaware corporation. CCC is hereinafter referred to as “Respondent.”
37. Respondent is a “person” within the meaning of Sections 113(a) and 502 of the CAA, 42 U.S.C. §§ 7413(a) and 7661a, and as defined in section 302(e) of the CAA, 42 U.S.C. § 7602(e).
38. At the Facility, Respondent operates four carbon black units (Units Nos. 1-4). Respondent partially combusts and thermally decomposes a heavy oil feed in a low oxygen reactor under controlled conditions, thus producing solid carbon particles which are recovered as the carbon black product. The carbon black is then dried, pelletized, and packaged.
39. The Facility meets the definition of a “major stationary source” in 40 C.F.R. § 52.21(b)(1)(i)(a) because it is a carbon black plant that has the potential to emit in excess of 100 tons per year of the following regulated pollutants: of NO_x, SO₂, PM, VOC, CO, H₂S, and TRS.
40. Kay County is designated as either attainment or unclassifiable for all criteria pollutants. See 40 C.F.R. § 81.337.
41. The Ponca City facility currently operates under a Title V permit (facility number 98-176-TV(PSD)(M-2) that was issued on April 22, 2000, and renewed on October 24, 2004.
42. By information request letters issued pursuant to the authority of Section 114 of the Act, 42 U.S.C. § 7414, dated May 20, 2005, and February 29, 2008, to the Ponca City Facility, EPA required Respondent to submit specific information regarding its carbon black manufacturing facilities located within Region 6. During an inspection of the Ponca City facility, on May 20-25, 2008, EPA also required Respondent to submit specific information regarding its carbon black manufacturing facilities.

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43. Respondent replied to EPA's Section 114 information requests to the Ponca City Facility with separate submittals in June 2005 and April 2008.

C. VIOLATIONS

44. Upon review of the information provided by Respondent, referenced above in Paragraph 42, EPA Region 6 has concluded that Respondent conducted numerous capital projects on carbon black units at the Facility which increased the Facility's capacity to produce carbon black.
45. Furthermore, the projects referenced below in Paragraphs 46 through 89 also meet the definition of "major modification" provided under both 40 C.F.R. § 52.21(b)(2)(i) and OAPCR 1.4.4(b)(2), because they represent: a physical change in, or a change in the method of operation of, a major stationary source that resulted in significant emissions increases of a regulated NSR pollutant(s) (specifically, NO_x, SO₂, CO, VOC, TRS, H₂S, and PM), and significant net emissions increases of those pollutants from a major stationary source.
- (1) Failure to Obtain PSD Permit Prior to Making a Major Modification to Unit No. 1 in or about 1985 (CO, VOC, SO₂, H₂S, and TRS Emissions Increases)**
46. In or about 1985, Respondent installed at Unit 1 new reactors of greater capacity than the existing reactors. The modification resulted in increased production rates.
47. The modification resulted in "significant net emission" increases in CO, VOC, SO₂, H₂S, and TRS.
48. In failing to apply for or obtain authority, via necessary preconstruction permits, prior to modifying Unit No. 1 at the Facility in or about 1986, Respondent continues to be in violation of federal requirements for preconstruction permits under applicable PSD regulations, specifically those provided under 40 C.F.R. § 52.21(i)(1) and OAPCR 1.4.2(a)(1).
49. In failing to apply BACT to the major modification made to Unit No. 1 at the Facility in or about 1986, and operating each day thereafter without applying necessary technologies under BACT, Respondent violated and continues to violate applicable federal PSD requirements for major modifications; specifically, those provided under 40 C.F.R. § 52.21(j)(3) and OAPCR 1.4.4(e)(2).
50. In continuing to operate the Facility on or after the modification of the unit in 1986, without obtaining or applying for the required permit, Respondent continues to accrue violations of applicable federal PSD regulations; specifically, those provided under 40 C.F.R. §§ 52.21(r)(1) and 70.1(b), and OAPCR 1.4.1(b)(1), 1.4.1(c)(1), and 1.4.3(a)(1).

(2) Failure to Obtain PSD Permit Prior to Making a Major Modification to Unit No. 2 in or about February 1990 (CO, VOC, SO₂, H₂S, and TRS Emissions Increases)

51. In or about February 1990, Respondent made a modification to the combustion sections of the Unit No. 2 No. 21 Reactor, including, but not limited to, upgrading the carcass reactor technology and constructing new gas combustion sections. The modification resulted in increased production rates.
52. The modification triggered "significant net emission" increases in CO, VOC, SO₂, H₂S, and TRS emissions.
53. In failing to apply for or obtain authority, via necessary preconstruction permits, prior to modifying Unit No. 2 at the Facility in or about February 1990, Respondent continues to be in violation of federal requirements for preconstruction permits under applicable PSD regulations; specifically, those provided under 40 C.F.R. § 52.21(i)(1) and OAPCR 1.4.2(a)(1).
54. In failing to apply BACT to the major modification made to Unit No. 2 at the Facility in or about February 1990, and commencing operations each day thereafter without applying necessary technologies under BACT, Respondent continues to accrue violations of applicable federal PSD requirements for major modifications; specifically, those provided under 40 C.F.R. § 52.21(j)(3) and OAPCR 1.4.4(e)(2).
55. In reinitiating, and continuing to operate, the Facility, in or about February 1990, without obtaining or applying for the required permit to operate following completion of the major modification to Unit No. 2, Respondent continues to accrue violations of applicable federal PSD regulations; specifically, those provided under 40 C.F.R. §§ 52.21(r)(1) and 70.1(b), and OAPCR 1.4.1(b)(1), 1.4.1(c)(1), and 1.4.3(a)(1).

(3) Failure to Obtain PSD Permit Prior to Making a Major Modification to Unit No. 3 in or about 1992 (CO, VOC, H₂S, and TRS Emissions Increases)

56. In or about 1992, Respondent modified Unit No. 3, including, but not limited to, installing a new exhaust gas fan on the heavy duty Chicago Blower Model 5500 in service on Unit 3. The modification resulted in increased production to the unit.
57. The modification triggered "significant net emission" increases in CO and VOC H₂S, and TRS.

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58. In failing to apply for or obtain authority, via necessary construction permits, prior to modifying Unit No. 3 at the Facility in or about October 1994, Respondent continues to be in violation of federal requirements for preconstruction permits under applicable PSD regulations; specifically, those provided under 40 C.F.R. § 52.21(i)(1) and OAPCR 1.4.2(a)(1).
59. In failing to apply BACT to the major modification made to Unit No. 3 at the Facility in or about October 1994, and commencing operations each day thereafter without applying necessary technologies under BACT, Respondent continues to accrue violations of applicable federal PSD requirements for major modifications; specifically, those provided under 40 C.F.R. § 52.21(j)(3) and OAPCR 1.4.4(e)(2).
60. In reinitiating, and continuing to operate the Facility in or about October 1994, without obtaining or applying for the required permit to operate following completion of the major modification to Unit No. 3, since October 1994, Respondent continues to accrue violations of applicable federal PSD regulations; specifically, those provided under 40 C.F.R. §§ 52.21(r)(1) and 70.1(b), and OAPCR 1.4.1(b)(1), 1.4.1(c)(1), and 1.4.3(a)(1).

(4) Failure to Obtain PSD Permit Prior to Making a Major Modification to Unit No. 2 in or about September 1994 (CO, VOC, H₂S, and TRS Emissions Increases)

61. In or about September 1994, Respondent modified Unit No. 2, including, but not limited to, replacing cell plates, adding filter cloth area and repairing the dryer exhaust bag filter. The modification resulted in increased production to the unit.
62. The modification triggered "significant net emission" increases in CO, VOC, H₂S, and TRS emissions as defined in both 40 C.F.R. § 52.21(b)(5) and OAPCR 1.4.4(b)(22)(A).
63. In failing to apply for or obtain authority, via necessary construction permits, prior to modifying Unit No. 2 at the Facility in or about September 1994, Respondent continues to be in violation of federal requirements for preconstruction permits under applicable PSD regulations; specifically, those provided under 40 C.F.R. § 52.21(i)(1) and OAPCR 1.4.2(a)(1).
64. In failing to apply BACT to the major modification made to Unit No. 2 at the Facility in or about September 1994, and commencing operations each day thereafter without applying necessary technologies under BACT, Respondent continues to accrue violations of applicable federal PSD requirements for major modifications; specifically, those provided under 40 C.F.R. § 52.21(j)(3) and OAPCR 1.4.4(e)(2).

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65. In reinitiating, and continuing to operate, the Facility in or about September 1994, without obtaining or applying for the required permit to operate following completion of the major modification to Unit No. 2, since September 1994, Respondent continues to accrue violations of applicable federal PSD regulations; specifically, those provided under 40 C.F.R. §§ 52.21(r)(1) and 70.1(b), and OAPCR 1.4.1(b)(1), 1.4.1(c)(1), and 1.4.3(a)(1).

(5) Failure to Obtain PSD Permit Prior to Making a Major Modification to Unit No. 3 in or about October 1994 (CO and VOC Emissions Increases)

66. In or about October 1994, Respondent modified Unit No. 3, including, but not limited to, replacing cell plates, adding filter cloth area and repairing the dryer exhaust bag filter. The modification resulted in increased production to the unit. The modification resulted in increased production at the unit.
67. The modification triggered "significant net emission" increases in CO and VOC.
68. In failing to apply for or obtain authority, via necessary construction permits, prior to modifying Unit No. 3 at the Facility in or about October 1994, Respondent continues to be in violation of federal requirements for preconstruction permits under applicable PSD regulations; specifically, those provided under 40 C.F.R. § 52.21(i)(1) and OAPCR 1.4.2(a)(1).
69. In failing to apply BACT to the major modification made to Unit No. 3 at the Facility in or about October 1994, and commencing operations each day thereafter without applying necessary technologies under BACT, Respondent continues to accrue violations of applicable federal PSD requirements for major modifications; specifically, those provided under 40 C.F.R. § 52.21(j)(3) and OAPCR 1.4.4(e)(2).
70. In reinitiating, and continuing to operate the Facility in or about October 1994, without obtaining or applying for the required permit to operate following completion of the major modification to Unit No. 3, since October 1994, Respondent continues to accrue violations of applicable federal PSD regulations; specifically, those provided under 40 C.F.R. §§ 52.21(r)(1) and 70.1(b), and OAPCR 1.4.1(b)(1), 1.4.1(c)(1), and 1.4.3(a)(1).

(6) Failure to Obtain PSD Permit Prior to Making a Major Modification to Unit No. 1 in or about January 1995 (CO and VOC Emissions Increases)

71. In or about January 1995, Respondent modified Unit No. 1 including, but not limited to, replacing cell plates, adding filter cloth area and repairing the dryer exhaust bag filter. The modification resulted in increased production to the unit.

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72. The modification triggered "significant net emission" increases in CO and VOC.
 73. In failing to apply for or obtain authority, via necessary construction permits, prior to modifying Unit No. 1 at the Facility in or about January 1995, Respondent continues to be in violation of federal requirements for preconstruction permits under applicable PSD regulations; specifically, those provided under 40 C.F.R. § 52.21(i)(1) and OAPCR 1.4.2(a)(1).
 74. In failing to apply BACT to the major modification made to Unit No. 1 at the Facility in or about January 1995, and commencing operations each day thereafter without applying necessary technologies under BACT, Respondent continues to accrue violations of applicable federal PSD requirements for major modifications; specifically, those provided under 40 C.F.R. § 52.21(j)(3) and OAPCR 1.4.4(e)(2).
 75. In reinitiating, and continuing to operate the Facility in or about January 1995, without obtaining or applying for the required permit to operate following completion of the major modification to Unit No. 1, since January 1995, Respondent continues to accrue violations of applicable federal PSD regulations; specifically, those provided under 40 C.F.R. §§ 52.21(r)(1) and 70.1(b), and OAPCR 1.4.1(b)(1), 1.4.1(c)(1), and 1.4.3(a)(1).
- (7) Failure to Obtain PSD Permit Prior to Making a Major Modification to Unit No. 4 in or about November 2003 and April 2004 (SO₂ Emissions Increase)**
76. In or about November 2003 and April 2004, Respondent modified Unit No. 4 to enrich or increase the oxygen concentration in the combustion air supplying the reactors. The modification resulted in increased production at the unit.
 77. The modification triggered a "significant net emission" increase in SO₂.
 78. In failing to apply for or obtain authority, via necessary construction permits, prior to modifying Unit No. 4 at the Facility in or about November 2003 and April 2004, Respondent continues to be in violation of federal requirements for preconstruction permits under applicable PSD regulations; specifically, those provided under 40 C.F.R. § 52.21(i)(1) and OAPCR 1.4.2(a)(1).
 79. In failing to apply BACT to the major modification made to Unit No. 4 at the Facility in or about November 2003 and April 2004, and commencing operations each day thereafter without applying necessary technologies under BACT, Respondent continues to accrue violations of applicable federal PSD requirements for major modifications; specifically, those provided under 40 C.F.R. § 52.21(j)(3) and OAPCR 1.4.4(e)(2).

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80. In reinitiating, and continuing to operate the Facility in or about November 2003 and April 2004, without obtaining or applying for the required permit to operate following completion of the major modification to Unit No. 4 since April 2004, Respondent continues to accrue violations of applicable federal PSD regulations; specifically, those provided under 40 C.F.R. §§ 52.21(r)(1) and 70.1(b), and OAPCR 1.4.1(b)(1), 1.4.1(c)(1), and 1.4.3(a)(1).

(8) Failure to Obtain PSD Permit Prior to Making a Major Modification to Unit No. 1 in or about December 2004 and September 2007 (NO_x and SO₂ Emissions Increases)

81. In or about December 2004 and September 2007, Respondent modified Unit No. 1 by installing air preheaters with larger capacities and higher temperatures. The modification resulted in increased production rates at the unit.
82. The modification triggered "significant net emission" increases in NO_x and SO₂.
83. In failing to apply for or obtain authority, via necessary construction permits, prior to modifying Unit No. 1 at the Facility in or about December 2004 and September 2007, Respondent continues to be in violation of federal requirements for preconstruction permits under applicable PSD regulations; specifically, those provided under 40 C.F.R. § 52.21(i)(1) and OAPCR 1.4.2(a)(1).
84. In failing to apply BACT to the major modification made to Unit No. 1 at the Facility in or about December 2004 and September 2007, and commencing operations each day thereafter without applying necessary technologies under BACT, Respondent continues to accrue violations of applicable federal PSD requirements for major modifications; specifically, those provided under 40 C.F.R. § 52.21(j)(3) and OAPCR 1.4.4(e)(2).
85. In reinitiating, and continuing to operate the Facility in or about December 2004 and September 2007, without obtaining or applying for the required permit to operate following completion of the major modification to Unit No. 1, since September 2007, Respondent continues to accrue violations of applicable federal PSD regulations; specifically, those provided under 40 C.F.R. §§ 52.21(r)(1) and 70.1(b), and OAPCR 1.4.1(b)(1), 1.4.1(c)(1), and 1.4.3(a)(1).

(9) Failure to Include BACT in the Title V Permit

86. On April 22, 2000, Respondent obtained Federal Operating Permit No. 98-176-TV(PSD)(M-2). That Title V permit did not include BACT for NO_x, SO₂, CO, VOC, H₂S, PM₁₀, or TRS.
87. On October 24, 2004, Respondent obtained Federal Operating Permit No. 98-176-TV (PSD)(M-2). That Title V permit did not include BACT for NO_x, SO₂, CO, VOC, H₂S, PM₁₀, and TRS.

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88. Accordingly, the Title V permits issued to Respondent in April 2000 and October 2004 did not include emissions limitations for NO_x, SO₂, CO, VOC, H₂S, PM₁₀, and TRS that assure compliance with the PSD requirements of the Act and the Oklahoma SIP.
89. In failing to assure compliance with all applicable emission limitations; specifically, those requiring that it incorporate BACT for NO_x, SO₂, CO, VOC, H₂S, PM₁₀, and TRS into its permit applications and subsequent permits, Respondent violated and continues to violate section 502(a) and 504(a) of the Act, 42 U.S.C. Sections 7661a(a) and 7661c(a), as well as 40 C.F.R. sections 70.5 and 70.6(a) (2009).

D. ENFORCEMENT

90. Sections 113(a)(1) and (3) of the Act, 42 U.S.C. § 7413(a)(1) and (3), provide that the Administrator may bring a civil action in accordance with Section 113(b) of the Act, 42 U.S.C. § 7413(b), whenever, on the basis of any information available to the Administrator, the Administrator finds that any person has violated or is in violation of any requirement or prohibition of, inter alia, the PSD requirements of Section 165(a) of the Act, 42 U.S.C. § 7475(a); Title V of the Act, 42 U.S.C. §§ 7661-7661f, or any rule or permit issued thereunder; or the PSD provisions of the Alabama SIP. See also 40 C.F.R. § 52.23.
91. Section 113(b) of the Act, 42 U.S.C. § 7413(b), authorizes the Administrator to initiate a judicial enforcement action for a permanent or temporary injunction, and/or for a civil penalty of up to \$25,000 per day for each violation occurring on or before January 30, 1997; up to \$27,500 per day for each such violation occurring on or after January 31, 1997 and up to and including March 15, 2004; up to \$32,500 per day for each such violation occurring on or after March 16, 2004 through January 12, 2009; and up to \$37,500 per day for each such violation occurring on or after January 13, 2009, pursuant to the Federal Civil Penalties Inflation Adjustment Act of 1990, 28 U.S.C. § 2461, as amended by 31 U.S.C. § 3701, 40 C.F.R. § 19.4, and 74 Fed. Reg. 626 (Jan. 7, 2009) against any person whenever such person has violated, or is in violation of, inter alia, the requirements or prohibitions described in the preceding paragraph.
92. Section 167 of the Act, 42 U.S.C. § 7477, authorizes the Administrator to initiate an action for injunctive relief, as necessary to prevent the construction, modification of a major emitting facility which does not conform to the PSD requirements in Part C of the Act.

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E. OPPORTUNITY FOR CONFERENCE

CCC may, upon request, confer with EPA. The conference will enable CCC to present evidence bearing on the finding of violations, on the nature of the violations, and on any efforts it may have taken or proposes to take to achieve compliance. CCC has a right to be represented by counsel. A request for a conference must be made within ten (10) days of receipt of this Notice, and the request for a conference or other inquiries concerning the Notice should be made in writing to:

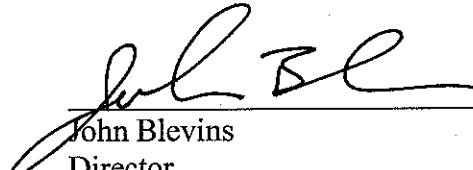
Jan Gerro (6RC-EA)
Assistant Regional Counsel
Air Enforcement Branch
Office of Regional Counsel, Region 6
U.S. Environmental Protection Agency
1445 Ross Avenue
Dallas, Texas 75202-2733

If you have any questions in relation to the NOV, please feel free to call Ms. Gerro at (214) 665-2121.

F. EFFECTIVE DATE

This NOV shall become effective immediately upon issuance.

Dated: 5.12.2012



John Blevins
Director
Compliance Assurance and
Enforcement Division